



OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

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DEPARTMENT OF TRANSPORTATION

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DOCKET SECTION

37516
15-July-98

Docket Clerk
U.S. DOT Dockets, Room PL-401
400 7th St., S.W.
Washington, D.C. 20590-0001

FHWA-98-3706-48

Dear Sir or Madame:

Enclosed are the comments of the Owner Operator Independent Drivers Association (OOIDA) on the Hours of Service of Drivers; Supporting Documents notice of proposed rulemaking. [Docket No. FHWA-98-3706] Rin 2125-AD52.

We have enclosed six sets of photo copies for your use.

Sincerely yours,

John Siebert, Project Manager
OOIDA

**BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION**

DEPARTMENT OF TRANSPORTATION

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DOCKET SECTION

**COMMENTS OF THE
OWNER OPERATOR INDEPENDENT DRIVERS ASSN., INC.**

**IN RESPONSE TO
NOTICE OF PROPOSED RULEMAKING
REQUEST FOR COMMENTS**

**[FHWA Docket No. FHWA 98-3706]
RIN 2125 - AD52**

Hours of Service of Drivers; Supporting Documents

49 CFR Parts 390 and 395

**JAMES J. JOHNSTON
President
Owner Operator Independent
Drivers Assn., Inc.**

July 14, 1998

BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION

I. INTRODUCTION

A. Procedural Statement

These comments are submitted by the Owner Operator Independent Drivers Association, Inc. (“OOIDA” or “Association”) in response to the request for comments and establishment of a docket published by the Federal Highway Administration (“FHWA” or “Agency”), Docket No. FHWA 98-3706 RIN 2125-AD52. [63 FR 19457] (April 20, 1998).

A proposal to amend the hours-of-service (HOS) record keeping which would now call for carriers to implement a document auditing system to be used to verify the accuracy of the drivers’ Record of Duty Status (RODS) and hours-of-service (HOS). This NPRM would also specify that failure to have such a system would require that motor carriers maintain various types of business documents and that all drivers employed by that carrier collect and submit such documents in order to support the accuracy of the drivers’ RODS.

B. Interest of the Owner Operator Independent Drivers Assn., Inc.

The Owner Operator Independent Drivers Assn., Inc. is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. The more than 40,000 members of OOIDA are small businessmen and women in all 50 states and Canada who collectively own and operate more than 60,000 individual heavy-duty trucks and small truck fleets. Small business truckers represent nearly half of the total number of Class 7 and 8 trucks operated in the United States. The mailing address of the Association is:

Owner Operator Independent Drivers Assn., Inc.

3 11 R.D. Mize Rd.

Grain Valley, Missouri 64029

OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers at both the federal and state levels.

The Association advocates the views of owner-operators and professional drivers in a number of areas on issues that affect owner-operators and small business truckers. OOIDA is active in all aspects of highway safety. Its representatives serve on various committees of the National Governors' Association, the Commercial Vehicle Safety Alliance, the American Association of State Highway and Transportation Officials, the Canadian Council of Motor Transport Administrators, the National Motor Carrier Advisory Committee and other groups involved in highway safety. Any change in the Federal Motor Carrier Safety Regulations has the potential for directly affecting owner-operators, including OOIDA members.

C. Summary

OOIDA believes FHWA should postpone any consideration of these proposed regulations until after the adoption of new HOS regulations currently in the rulemaking process. Beefing up enforcement strategies on regulations that are universally regarded as ineffective in managing fatigue will not deliver a safety dividend. No matter how much more efficient FHWA becomes in enforcing these counterproductive regulations, highway safety cannot be positively affected, and may in fact be adversely affected.

The association also opposes the vague language which would require carriers without a self monitoring system to retain **all** supporting documents (emphasis added). The idea that a carrier would be required to possess and maintain the private records of another independent company, which may have legitimate business need for them, is ill conceived, and may indeed cause a fundamental change the nature of the relationship between lessor and lessee.

II. COMMENTS OF THE ASSOCIATION

The Association supports regulations that are cost-effective, and provide a safer highway environment for commercial drivers and the general public alike. This proposal fails on both counts. The proposed revisions would not only be unnecessarily burdensome to the industry, they would provide no safety benefit. The current HOS regulations are antiquated and inherently flawed. Bolstering the enforcement of regulations that demonstrably have little influence on fatigue management does not enhance highway safety. Since the Essex Fatigue Study concluded that time on duty has no statistically significant effect on fatigue, refining a methodology to detect HOS violations under the current regulations makes no sense. Rather than beef-up enforcement of irrational regulations, FHWA would be better served to first develop practical

HOS regulations that indeed help drivers manage fatigue in the workplace. OOIDA urges the Agency to postpone any further action on this issue at least until workable HOS regulations have been finalized.

The Association maintains that requiring carriers who do not have “a self monitoring system to retain all ‘supporting documents’” (emphasis added) is a vague direction open to varied interpretation, unequal enforcement and is unnecessarily intrusive.

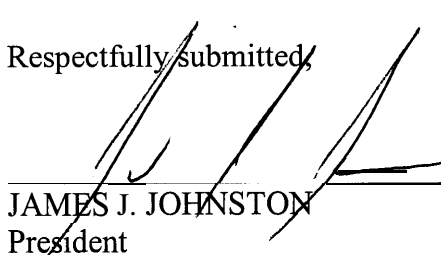
A number of the documents listed as examples are retained by owner-operators for their own private business purposes. For example: toll receipts and motel receipts are needed by owner operators as tax records, yet these regulations would have them physically stored at a carrier’s (or several carriers’) place of business and unavailable to the owner operator for an IRS audit. There is also the difference of retention time required by the DOT (six months) and IRS (seven years) for these documents. Any other documents accumulated by owner-operators and drivers beyond those examples would almost certainly be related to strictly personal affairs. This proposal would mandate that owner-operators hand over private information to carriers that serve no business purpose to the carrier. Requiring owner-operators to surrender these receipts for which they are not reimbursed by the carrier into the keeping of the carrier can blur the difference between independent contractor and a carrier employee. OODIA believes strongly that this proposal, if adopted, would violate the sanctity of owner-operators’ private business data while placing undue hardship on the leased carriers.

III. CONCLUSION

The Association believes that highway safety would be better served if consideration of this proposed revision was dropped as overly burdensome, intrusive, and unnecessary. Should

that prove to be impossible, we recommend consideration be postponed until workable hours-of-service revisions are in place, or considered as a part of the revised HOS rulemaking now underway. Since this proposal deals with enforcement of antiquated regulations that may in fact cause driver fatigue, OOIDA believes that a dropping or postponing action is the only rational position to take.

Respectfully submitted,



JAMES J. JOHNSTON

President

Owner Operator Independent
Drivers Assn., Inc.

July 14, 1998